Dato' Ahmad Zahid bin Hamidi v Amir Bazli bin Abdullah

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-02(IM)-1803 OF 2010
ZALEHA ZAHARI, CLEMENT SKINNER AND AZIAH ALI JJCA
18 MAY 2012

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Civil Procedure — Striking out — Writ and statement of claim — Principles governing — Whether claim and defence and counterclaim raised issues of fact requiring serious consideration — Whether full trial with witness testimony only way to resolve dispute — Whether case inappropriate for striking out — Whether striking out procedure only appropriate in plain and obvious cases where claim was 'obviously unsustainable'

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The appellant/defendant had sought, unsuccessfully, to strike out the respondent's/plaintiff's writ and statement of claim against him in the High Court on the ground, inter alia, that the claim did not disclose a reasonable cause of action and was frivolous, vexatious and an abuse of process of court. In his claim, the respondent had alleged that he was at a petrol station one night when the appellant's agents/servants forcefully took him to a clubhouse where he was assaulted by the appellant and others and warned that he would be killed. The assault, he alleged, caused serious injuries to his face. The respondent had also alleged that he was unlawfully confined at the appellant's house for several hours. The respondent claimed damages for his injuries and other losses. In his defence and counterclaim, the appellant denied the respondent's version of events. He claimed the respondent went to the clubhouse on his own accord and on the appellant's invitation went to the latter's house. The appellant admitted there had been an exchange of words followed by scuffles but denied causing the respondent the injuries he had claimed or that he had unlawfully confined him. The appellant counterclaimed for damages for libel saying he suffered distress, embarrassment and anxiety because of the publication in newspapers of the version of events as related by the respondent. The appellant appealed to the Court of Appeal against the High Court's dismissal of his striking out application.

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Held, dismissing the appeal with costs:

(1) Both the claim and the defence and counterclaim raised issues of fact which required serious consideration and were capable of resolution only after taking *viva voce* evidence at trial by calling of witnesses and cross-examination of them. Accordingly, the case was not an appropriate one for striking out (see para 19).

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(2) It was only in plain and obvious cases that recourse should be had to the

summary process under O 18 r 19 of the Rules of the High Court 1980. The procedure could only be invoked when it could clearly be seen that a claim or answer was on the face of it 'obviously unsustainable' (see para 17).

(3) So long as the statement of claim disclosed some ground of action, the mere fact the plaintiff was unlikely to succeed at the trial was no ground for striking it out (see para 18).

[Bahasa Malaysia summary

Perayu/defendan telah memohon tetapi tidak berjaya untuk membatalkan writ dan pernyataan tuntutan responden/plaintif terhadapnya di Mahkamah Tinggi atas alasan, antara lain, bahawa tuntutan tersebut tidak mengemukakan kausa tindakan yang munasabah dan adalah remeh, menyusahkan dan penyalahgunaan proses mahkamah. Dalam tuntutannya, responden telah mendakwa bahawa dia berada di stesyen minyak pada malam apabila ejen/pekerja perayu secara paksa membawa dia ke kelab di mana dia diserang oleh perayu dan yang lain dan diberi amaran yang dia akan dibunuh. Responden mendakwa serangan tersebut menyebabkan kecederaan serius di mukanya. Responden juga mendakwa bahawa dia dikurung secara salah di sisi undang-undang di rumah perayu untuk beberapa jam. Responden menuntut ganti rugi untuk kecederaannya dan kerugian lain. Dalam pembelaan dan tuntutan balasnya, perayu menafikan versi kejadian responden. Dia mendakwa responden pergi ke kelab tersebut atas kehendak dirinya sendiri dan atas jemputan perayu pergi ke rumah perayu. Perayu mengaku terdapat pertikaman lidah diikuti dengan pergelutan tetapi menafikan menyebabkan kecederaan yang didakwanya atau dia telah secara salah di sisi undang-undang mengurung responden. Perayu menuntut balas untuk ganti rugi untuk libel dengan menyatakan dia mengalami kesusahan, rasa malu dan keresahan atas sebab penerbitan dalam suratkhabar mengenai versi kejadian seperti yang dinyatakan oleh responden. Perayu merayu ke Mahkamah Rayuan terhadap penolakan permohonan pembatalannya oleh Mahkamah Tinggi.

Diputuskan, menolak rayuan dengan kos:

(1) Kedua-dua dakwaan dan pembelaan dan tuntutan balas membangkitkan isu-isu fakta yang memerlukan pertimbangan yang serius dan boleh mencapai resolusi hanya selepas mengambil kira keterangan *viva voce* di perbicaraan dengan memanggil saksi-saksi dan memeriksa balas mereka. Dengan itu, bukan kes yang wajar untuk pembatalan (lihat perenggan 19).

(2) Ia adalah kes yang biasa dan jelas bahawa jalan keluar patut dibuat kepada proses terus di bawah A 18 k 19 Kaedah-Kaedah Mahkamah Tinggi

1980. Prosedur hanya boleh dibangkitkan apabila ia dapat dilihat dengan jelas bahawa dakwaan atau jawapan atas fakta 'obviously unsustainable' (lihat perenggan 17).

(3) Asalkan pernyataan tuntutan mengemukakan beberapa alasan tindakan, fakta semata-mata plaintif tidak mungkin berjaya semasa perbicaraan bukan alasan untuk membatalkannya (lihat perenggan 18).]

Notes

For cases on writ and statement of claim, see 2(3) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 7632–7635.

Cases referred to

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corp Bhd [1993] 3 MLJ 36, SC (refd)

Loh Holdings Sdn Bhd v Peglin Development Sdn Bhd & Anor [1984] 2 MLJ 105, FC (refd)

Legislation referred to

Rules of the High Court 1980 O 6 r 2(1)(a), O 18 r 19

Appeal from: Civil No MT4(2)–21–31 of 2007 (High Court, Shah Alam)

Shamsul Bahrin Ibrahim (Sasi Dhara Menon with him) (Bahrin) for the appellant.

Karpal Singh (Sargeet Kaur with him) (Karpal Singh & Co) for the respondent.

Zaleha Zahari JCA (delivering judgment of the court):

[1] This is an appeal against the decision of learned judicial commissioner Shah Alam dated 21 April 2010 in dismissing the defendant's ('the appellant') application in encl (5).

[2] Vide encl (5) the defendant seeks to strike out the plaintiff's ('respondent') writ and statement of claim on the following grounds: firstly, by reason of non endorsement of the plaintiff's claim in the writ; secondly, by reason of the statement of claim not disclosing a reasonable cause of action against the defendant and therefore frivolous, vexatious and an abuse of the court.

[3] The rival contentions of the parties in this case are as follows.

THE CLAIM

[4] In his statement of claim the plaintiff alleged that on 16 January 2006, at

about 10pm, when he was filling up petrol in his car at a petrol station adjacent to UNITEN, Bangi, the defendant's agents had threatened him. He was then taken by force to a club at Country Heights, Kajang. The plaintiff stated that he saw the defendant together with his son-in-law, (Hisham) and son ('KK'), there. According to the plaintiff there were others present whom he alleged to be the defendant's servants and/agents.

[5] According to the plaintiff he had held out his hand to the defendant for a hand shake but the defendant had punched him arising from which his nasal bone broke. The plaintiff further alleged that arising from said assault his left eye was swollen and that he was unable to open that eye.

[6] After the defendant's initial assault upon him, the plaintiff alleged that the defendant's agents who were there also assaulted him together with the defendant. The plaintiff's case was that arising from the assault upon him, he suffered serious injuries to his face.

[7] The plaintiff also alleged the defendant had threatened to kill him by repeatedly saying, 'kau akan ditanam' (ie he would bury him). He alleged that Hisham then, on the defendant's instructions, also threatened to kill him by saying, 'Aku dah ingatkan kau, aku sanggup mandi darah dengan kau' (ie I am reminding you, I am prepared to take a blood bath with you').

[8] The plaintiff further alleged the defendant and/or his agents had unlawfully confined him at the defendant's residence until 2am the following day, 17 January 2006.

[9] In these circumstances the plaintiff claimed loss and damages.

THE DEFENCE AND COUNTERCLAIM

[10] The defendant in his defence and counterclaim dated 24 August 2010 took issue with the plaintiff's version as to what transpired on that day in question. The defendant then set out his own version as what occurred. The defendant denied threatening the plaintiff; denied that the plaintiff was taken to the Country Heights Club by force but contended that the plaintiff went there 'under his own steam'; denied punching the plaintiff, took issue that the plaintiff had broken a nasal bone and suffering a swollen eye.

[11] The defendant then alleged that the plaintiff had committed unforgivable wrongs to his family. He however conceded that there was an exchange of words followed by scuffles. According to the defendant he had invited the plaintiff to his residence to avoid a commotion at the Club House

and that the plaintiff went there without a fuss. The defendant denied placing the plaintiff in confinement. According to the defendant the plaintiff had subsequently left the house like a normal visitor.

[12] The defendant took issue that the plaintiff had suffered loss and damage. If indeed, there was such a loss, the defendant contended that the plaintiff was the author of his own loss.

[13] The defendant then in his counterclaim set out in detail what he considered to be the background leading to the confrontation with the plaintiff on that material day in question. He related his version of the plaintiff's conduct prior to the incident, what he did, how the plaintiff reacted, and the conduct of those present.

[14] According to the defendant by reason of the publication of the untrue version of events related by the plaintiff which was reported in some newspapers, he had suffered considerable distress, embarrassment and anxiety. He then claimed damages for libel.

[15] Thereafter, vide summons in chambers filed on 29 September 2007 in encl (5) the defendant applied to strike out the plaintiff's writ and statement of claim.

DECISION

[16] On the first issue, we agree with the learned judge that nothing turns on this point. We agree that the indorsement on the writ of summons, 'Tuntutan Plaintif terhadap Defendan adalah seperti terkandung di dalam Penyataan Tuntutan dilembarkan di sini', sufficed for the purpose of O 6 r 2(1)(a) of the Rules of the High Court 1980 ('the Rules').

[17] In respect of the second issue, the principles upon which a court acts in exercising its discretionary power under any of the four limbs of O 18 r 19(1) of the Rules are well settled. There is a surfeit of authorities on this point. It is only in plain and obvious cases that recourse should be had to the summary process under this rule. The summary procedure can only be invoked when it can clearly be seen that a claim or answer is on the face of it 'obviously unsustainable' (see *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corp Bhd* [1993] 3 MLJ 36).

[18] So long as the statement of claim discloses some ground of action, the

mere fact that the plaintiff is unlikely to succeed at the trial is no ground for striking out (see *Loh Holdings Sdn Bhd v Peglin Development Sdn Bhd & Anor* [1984] 2 MLJ 105 (FC)).

[19] We agree with the learned High Court that this clearly was not such a case. Both the claim and the defence and counterclaim raises issues of fact which requires serious consideration and are capable of resolution only after taking viva voce evidence at trial by calling of witnesses and cross-examination of them. Accordingly this certainly was not an appropriate case for striking out.

[20] For the above reasons the appeal was dismissed with costs of RM5,000.

Appeal dismissed with costs.

Reported by Ashok Kumar